UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

-----x UNITED STATES :

HIED STATES

-against-

DAVID HENAO, : ORDER

: 10-cr-231 (ENV)

Defendant. : x

## VITALIANO, D.J.

The Court grants defendant David Henao's motion (Dkt. 88) for compassionate release, pursuant to 18 U.S.C. § 3582(c)(1)(A), for the reasons stated in his motion, including his health issues, elevated risk of dire health consequences due to the current COVID-19 outbreak, and status as a non-violent offender. The government takes no position on defendant's eligibility for compassionate release, but argues his failure to exhaust his administrative remedies in the manner prescribed by § 3582(c) may deprive the Court of jurisdiction. Dkt. 89, at 3.

Nevertheless, the government is not asserting exhaustion. *Id.* at 4. As a result, the Court deems § 3582(c)'s exhaustion requirement as having been met. *See United States v. Monzon*, 99-cr-157 (DLC), 2020 WL 550220, at (S.D.N.Y. Feb. 4, 2020) (noting that "Second Circuit has not yet answered the question of whether § 3582(c)['s exhaustion requirement] is jurisdictional," and, though not resolving the jurisdictional question, denying § 3582(c)(1)(A) request where government opposed the request and defendant failed to exhaust administrative remedies). *But see United States v. Raia*, No. 20-1033, 2020 WL 1647922, at \*2 (3d Cir. Apr. 2, 2020) (requiring "strict compliance" with administrative exhaustion).

Therefore, the Court orders defendant David Henao, inmate number 65162-053, be released forthwith to home confinement, to which he will be subject until June 30, 2020.

Defendant will be permitted to leave his home after an initial quarantine period of 14 days for

reasons approved by the Federal Bureau of Prisons, including, but not limited to work and

medical treatment. Defense counsel is ordered coordinate defendant's release from custody and

to return him to the proposed residence in the Eastern District of New York.

A Second Amended Judgment will be filed.

BOP Senior In-House Counsel Nicole McFarland, BOP Counsel Adam Johnson, or BOP

Counsel Holly Pratesi are directed to confirm, via email, to the Court that they have received this

Order.

So Ordered.

Dated: Brooklyn, New York

April 9, 2020

/s/ Eric N. Vitaliano

ERIC N. VITALIANO

United States District Judge

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